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OFFICE OF PETITIONS

In re Patent No. 7691804	:	
Browning et al.	:	DECISION ON REQUEST
Issue Date: 04/06/2010	:	FOR RECONSIDERATION OF
Application No. 10/077137	:	PATENT TERM ADJUSTMENT
Filed: 02/15/2002	:	and
Attorney Docket No.	:	NOTICE OF INTENT TO ISSUE
08201.0027-00000	:	CERTIFICATE OF CORRECTION

This is a decision on the "REPLY TO DECISION DISMISSING REQUEST FOR RECALCULATION OF PATENT TERM ADJUSTMENT AND REQUEST FOR RECONSIDERATION," filed on June 9, 2010. Patentees request that the Patent Term Adjustment for the above-identified patent be reduced from 1011 days to 1002 days.

The request for reconsideration of the patent term adjustment indicated in the patent is **GRANTED**.

The patent term adjustment indicated in the patent is to be updated by issuance of a certificate of correction showing a revised Patent Term Adjustment of one thousand two (1002) days.

On April 6, 2010, the above-identified application matured into U.S. Patent No. 7,691,804. A request for reconsideration of the patent term adjustment was timely filed on May 14, 2010, filed within 2 months of the date the patent issued. See § 1.705(d). On May 20, 2010, a Decision on Request for Recalculation of Patent Term Adjustment in View of *Wyeth* was mailed, stating the request for recalculation was dismissed.

On June 9, 2010, the subject request for reconsideration was timely filed. Patentees contend that the Decision mailed on May 20, 2010, was improper because patentees had not requested reconsideration in view of *Wyeth*, but, instead, had asserted in

the request filed on May 14, 2010, that there appeared to be an error resulting in an extra 9 days of patent term resulting from the correction of the patent term adjustment in connection with a decision mailed on February 5, 2010 in response to an application for patent term adjustment under 37 CFR 1.705(b) filed on July 10, 2009.

Upon review, patentee's contention is well taken. A review of Office PAIR records reveals that period of applicant delay in response to the non-final Office action mailed on March 28, 2007, was changed from 98 days to 89 days as a result of a system correction. However, as a result of this correction, the period of applicant delay was improperly reduced by 9 days.

In view thereof, the patent term adjustment indicated on the patent should be 1002 days (753 days of Office delay and 483 days of three years delay less 234 (33 + 31 + 47 + 34 + 89) days of applicant delay).

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The Office thanks patentees for their good faith and candor in bringing this to the attention of the Office.

The application is being referred to the Certificate of Correction Branch for issuance of a certificate of correction to rectify this error. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by ONE THOUSAND TWO (1002) days.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3231.



Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,691,804 B2

DATED : Apr. 6, 2010

DRAFT

INVENTOR(S) : Browning et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 1011 days.

Delete the phrase "by 1011 days" and insert – by 1002 days--